IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:02.04.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No.359 of 1995
and
C.M.P.No.18475 of 2005

1. Sulochanammal
2. Munusamy Mudaliar ... Appellants/Defendants

Vs.

S.Ramachandran ... Respondent/Plaintiff

PRAYER: Second Appeal against the Judgment and decree of the Sub court, Tiruvallur, passed in A.S.No.91 of 1989, dated 30.08.1993 reversing the judgement and decree of the District Munsif Court, Ponneri in O.S.NO.277 of 1984, dated 10.08.1989.

For Appellants : Mr.R.Munusamy
For Respondent : Mr.P.V.Arul Phazamnee

J U D G M E N T

The defendants in the suit are the appellants. The plaintiff filed the suit for injunction from enjoyment of house site measuring 1 cent being the housing plot and the backyard of 0.02 and three fourth cents adjacent on the Southern side.

2. The case of the plaintiff was that a total extent of 15 cents out of 29.88 acres comprised in gramanatham Survey No. 252/1 in Nanoor Village was divided among four brothers each having one cent for housing purpose and backyard to the extent of 0.02 3/4 cents. The first defendant, is stated to have purchased the site of one of the brothers Subramaniya Mudaliar under a sale deed dated 01.10.1966 marked as Ex.A.3. It is the case of the plaintiff that among the four brothers who have divided except the first defendant all other sharers including Govinda Mudaliar, Varadhappa Mudaliar and Abrahiyammal who purchased the share of Natesa Mudaliar have orally exchange their backyard sites based on which the first backyard portion on the Eastern side was taken by Abrahiyammal the next by Varadhappa Mudaliar and thereafter on the West by Govinda Mudaliar and accordingly they have been enjoying their respective shares.

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3. The second defendant is stated to have purchased the share from Govinda Mudaliar by a sale deed dated 18.07.1983 marked as Ex.A.2. The plaintiff has purchased the share of Varadhappa Mudaliar on the same date 18.07.1983 under a sale deed marked as Ex.A.1 and has been in possession and enjoyment without interruption. The plaintiff is residing in the share site of Abrahiyammal along with backyard which is on the South Eastern side apart from the property purchased under Ex.A.1 which is adjacent. The defendants being the next adjacent owners on the Western side are attempting to trespass into the suit property, which was the cause of action for the suit for injunction. The Trial Court has dismissed the suit while on appeal the First Appellate Court has granted a decree for injunction. It is as against the said Appellate Court judgement the Second Appeal is filed by the defendants.

4. While admitting the Second Appeal, the following substantial question of law was framed by this Court.

"Whether an oral exchange of immovable property is valid?"

5. The contention raised on behalf of the appellants who are the defendants in the suit is that the oral partition stated to have been effected between the brothers in respect of backyard portion by which there was a rearrangement of various portions of backyard among the four brothers cannot be valid in law. Even though the Trial Court has dismissed the suit, the First Appellate Court while appreciating the contents of various documents relied upon by both the parties which are sale deeds in respect of four portions along with four backyards, the First Appellate Court has come a conclusion factually that out of the entire extent of A,B,C,D which included the house site as well as the backyard, the plaintiff who claims under Ex.A.1 sale deed has got the suit property allotted to him. The First Appellate Court has also appreciated Ex.B.2 based, which is a Xerox copy of a letter on which the defendants have made a claim of a passage and considered that unless it is proved that the original documents are not available, the Xerox copy cannot be taken into consideration for the purpose of deciding the issue and also having considered the case of the defendants that there was an authorization to use Xerox copy, since many other owners are involved but at the same time there is nothing in writing in the said document to show that the defendants are entitled to have the Xerox copy by way of an endorsement. The First Appellate court has also found that when it is the case of the defendants that original document of Ex.B.2 which was the basis of their claim was stated to be with the plaintiff, no step has been taken for the purpose of procuring the document from the plaintiff and in such circumstances, the First Appellate Court has correctly come to a conclusion that Ex.B.2 Xerox copy which was solely relied upon by the defendants cannot be taken into consideration.

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6. It is also found that Ex.A.1 sale deed under which the plaintiff has got property, has not been disputed by the defendants at all except claiming passage on the Western side. It is also the case that exchange took place in the year 1966 by virtue of the vendor under Ex.A.1 having been in possession of the property and therefore, by the time the suit was filed, he has otherwise obtained title by adverse possession since he has been in long enjoyment from 1966 onwards and suit having been filed in 1984. It is seen in the written statement filed by the defendants that there is a specific admission that as per Hindu Customs and Usage there has been a oral division among the brothers and the heirs of elders should take from Western side towards the Eastern side. It is on that basis clear that the first defendant who has inherited from the elder brother can only have the backyard on the Western side and there is no reason for him to claim the portion which has been purchased under Ex.A.1 by the plaintiff. There is absolutely no question of easement of necessity since the property of the first defendant purchased under Ex.A.3 is on the North Western side as far as the house site is concerned and the backyard is on the Western side and he can never claim easement of necessity for the purpose of reaching his housing site from Eastern side backyard. On the face of admission in the written statement about the oral partition among the brothers the First Appellate Court has correctly come to the conclusion on factual issue that the plaintiff is entitled for the property which is the third backyard from the Western side and adjacent to the housing site on the Northern site.

7. As far as the validity or otherwise of oral exchange of immovable property is concerned while admittedly in law if the value of property is less than Rs.100/- it does not require any registration, it presupposes any oral partition as not in-admissible. A reference to Ex.A.6 document shows that the value of the house site as well as the backyard itself is Rs.100/- and in view of the said fact as it is seen in the document it cannot be said that the oral exchange is not valid. In fact as it has been held by the Hon'ble Supreme Court in Brijvasilal Vs. Abdul Haji reported in 2001(9) SCC 367 as it has been narrated by Mulla of Transfer of Property Act while referring to Section 54 of the Transfer of Property Act,

> "in case of tangible immovable property of value less than Rs.100/- transfer may be made either by a registered document or by deliver of possession. The delivery of possession takes place when the seller places the buyer or such person as he directs, in possession of the property. This mode of transfer is only recognized in the case of tangible immovable property of small value, as deliver of possession is a patent act."

8. It is also relevant to point out that it is not even the pleading by the defendants in the written statement that the common passage, which is claimed by the defendant is a matter of necessity. On the other hand

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it is the specific pleading by the plaintiff about the oral exchange and in the face of the admission of D.W.1 that the plaintiff has purchased under Ex.A.1 document, the learned First Appellate Judge has correctly come to the conclusion by granting decree in favour of the plaintiff.

9. In view of the above said facts there is no substantial question of law involved in this case. Therefore, the Second Appeal fails and the same is dismissed. No cost.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nbj

To

1. The Subordinate Judge,
Tiruvattur.

2. The District Munsif,
Ponneri.

3. The Section Officer,
V.R.Section, High Court,
Madras.

1 cc To M/S.P.V.Arul Phazamnee, Advocate, SR.20972.

S.A.No.359 of 1995

TEJ(CO)
RVL 16.04.2007

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